

## PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Atty. Dkt. No.: 2557-001

John NOTO et al.

Appln. No.: 09/775,970

Group Art Unit: 2871

Filed: Feb. 2, 2001

Examiner: H. Ngo

Title: OPTICAL MULTIPLEXER AND  
CROSS-SWITCH USING ETCHED  
LIQUID CRYSTAL FABRY-PEROT  
ETALONS

REQUEST FOR RECONSIDERATION  
UNDER M.P.E.P. § 711.03

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In reply to the Notice of Abandonment mailed November 28, 2003, Applicant respectfully requests reconsideration of the holding of abandonment based on the following remarks and the true copies filed herewith. See M.P.E.P. § 711.03 (8<sup>th</sup> ed., rev. 1 2003).

## A. FACTUAL BACKGROUND

On April 1, 2003 Applicant filed with the PTO (via Express Mail service of the U.S. Postal Service) a reply to the Office Action dated February 6, 2003. The reply included:

- a Transmittal Letter,
- an Amendment Under 37 C.F.R. § 1.111 and Election of Species,
- a Petition for Extension of Time Under 37 C.F.R. §

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- 1.136, and
- a check for \$55.00.

A true copy of each of these documents, as filed, is submitted herewith for the Examiner's convenience of review.

The "Amendment Under 37 C.F.R. § 1.111 and Election of Species" paper included an election of one of the species identified by the Examiner in the election of species requirement set forth in the Office Action of February 6, 2003.

The "Transmittal Letter" included an itemized list of each of the papers filed as part of the reply and was marked with the notation:

*Express Mail Label No.:*  
*EV284829965US*

at the top of the sheet. See 37 C.F.R. § 1.10; M.P.E.P. § 513 (8<sup>th</sup> ed., rev. 1 2003).

The receipt for Express Mail Label No. EV284829965US was inscribed in the date in box with the date of April 1, 2003. A true copy of this Express Mail receipt is submitted herewith for the Examiner's convenience of review.

The PTO date stamped and returned a post card filing receipt that contains an itemized list of each of the papers filed as part of the reply. The date stamped filing receipt indicates the date of receipt as being April 1, 2003. A true copy of each of the date stamped filing receipt, as returned by the PTO, is

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submitted herewith for the Examiner's convenience of review.

The "Petition for Extension of Time Under 37 C.F.R. § 1.136" requested that the period for reply be extended one month.

The reply included a check sufficient to pay for a one month extension of time.

The reply included an authorization to charge a deposit in the event fee the payment were to be found insufficient. See the "Transmittal Letter," as well as the "Petition for Extension of Time Under 37 C.F.R. § 1.136" and page 8 of the "Amendment Under 37 C.F.R. § 1.111 and Election of Species."

**B. ANALYSIS**

The period for reply to the February 6, 2003 Office Action had been extended by petition to end on April 8, 2003. The original period for reply, being no shorter than 30 days, ended on March 8, 2003. Thus, the Petition, which requested a one month extension of time, extended the period for reply to end on April 8, 2003, one month after March 8, 2003.

The reply was filed on April 1, 2003 because that is the date when the papers listed on the "Transmittal Letter" were deposited with the U.S. Postal Service in accordance with the requirements of 37 C.F.R. § 1.10 and M.P.E.P. § 513. Additionally, the PTO has acknowledged by receipt of the reply as evidenced by the date stamped filing receipt.

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The reply was timely filed because the date of filing, April 1, 2003, was prior to the end of the extended period for reply, April 8, 2003.

The reply was complete because the only issue raised in the Office Action was an election of species and the reply included an election. See the "Amendment Under 37 C.F.R. § 1.111 and Election of Species" at page 7.

C. REQUEST FOR RELIEF

In view of the above, Applicant respectfully asks that the Examiner withdraw the holding of abandonment and resume prosecution of the application.

D. FEE

It is Applicant's good faith belief that no fee is due for consideration of this Request for Reconsideration. This belief is based on Applicant's belief that this application was never abandoned because a timely and complete reply was filed in response to the Office Action of February 6, 2003. See factual review and reasoning set forth in sections A and B, above.

In the event it is determined that it is necessary to treat this paper as a Petition for Revival under 37 C.F.R. § 1.137 (or other rule as deemed appropriate), the Director of the United States Patent and Trademark Office is authorized to charge the necessary petition fee to Deposit Account No. 18-1579.

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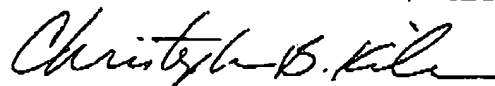
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In the event any issue remains that may be resolved via telephone conference, the Examiner is respectfully invited to contact the undersigned at the local number given below.

Respectfully submitted,

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